RECENT IMPORTANT DECISIONS

ANIMALS—INJURIES BY ANIMALS AT LARGE.—In an action for damages for injuries sustained by the kick of a horse, the petition alleged that for many days the defendant carelessly and negligently permitted a horse owned by him to run loose on the streets unattended, and that the plaintiff while playing about was kicked by the horse. On demurrer, *held,* no cause of action stated because no allegation that the owner knew the horse was vicious. *Brady* v. *Straub,* (Ky. Ct. of App. 1917), 197 S. W. 938.

Injuries by domestic animals may be divided into two classes, usual and unusual, or those according to the nature of the animal and those not according to the nature of the animal. For instance it is the usual nature of a domesticated animal to stray if unconfined and the defendant is charged with notice of such propensity. *Tonawanda R. R. Co.* v. *Munger,* 5 Denio (N. Y.) 255. In the case of a trespass no negligence on the part of the owner need be proved. *Milligan* v. *Wehinger,* 68 Pa. 235; *Noyes* v. *Colby,* 30 N. H. 143. But if the animal is lawfully where it is, as on a highway, and is not trespassing, the owner is not liable without proof of negligence on his part for any injury it may do upon the highway. *Tillett* v. *Ward,* L. R. 10 Q. B. D. 17; *Griggs* v. *Fleckenstein,* 14 Minn. 81. Where, however the harm is not according to the nature of the animal the law holds that the owner or keeper is not liable unless it appears that he should reasonably have foreseen the likelihood of such damage through his knowledge of a vicious or mischievous propensity in the animal. *Crowley* v. *Groonell,* 73 Vt. 45; *Cox* v. *Burbridge,* 106 E. C. L. 430; *Eddy* v. *Union R. R. Co.,* 25 R. I. 451. But in *Dickson* v. *McCoy,* 39 N. Y. 400, where the facts were practically the same as in the principal case it was held that it was sufficient to allege merely that the horse was negligently turned into the street without restraint or control, as it is in one sense a mischievous habit for a horse to run and play in the streets. In *Fallon* v. *O'Brien,* 12 R. I. 518, the court said, in accordance with the New York cases, that a horse even though he is not vicious is a dangerous animal to be at large in the frequented streets of a city. These latter cases would seem to indicate that even where the injuries are not according to the nature of the animal it is not necessary to allege knowledge of the vicious propensity of the beast, and that the owner may be negligent regardless of such knowledge. See ROBSON, TRESPASSES AND INJURIES BY ANIMALS.

BLASPHEMY.—DEVISE TO COMPANY ORGANIZED FOR PURPOSE OF FURTHERING ATHEISM.—Property was devised subject to certain annuities "upon trust for the Secular Society Limited". The object of the Society was "to promote, in such ways as may from time to time be determined, the principle that human conduct should be based upon natural knewledge, and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action". On an originating summons asking for payment

over to the Society of the residue of the testator's estate, *held,* that the Society was not incapable of taking under the devise. *Bowman* v. *Secular Society, Limited,* [1917] A. C. 406.

For discussion of this case, see article by Dean Lee in this issue.

BUILDING RESTRICTIONS—EMINENT DOMAIN—PUBLIC USE.—Petitioner proceeded under a statute providing that if the land court finds that the enforcement of a restriction would be inequitable it shall register title to the land free from the restrictions, provided, that in case of damage resulting therefrom, a reasonable compensation shall be paid to the owner. *Held,* that restrictions, requiring that no building costing less than $15,000 should be erected and that any building so erected should not be used as an apartment house or for mercantile purposes, give a property right and the statute is therefore unconstitutional as involving the taking of property for a private use. *Riverbank Improvement Co.* v. *Chadwick,* (Mass., 1917), 117 N. E. 244.

This case adopts the modern doctrine that such a restrictive covenant gives a property right and is not a mere personal covenant. 14 MICH. L. REV. 219. The principal question involved in this case is a determination of what is a public use. There are three different views. The old idea that property is practically absolute in the owner is seen in *Minnesota Canal and Power Co.* v. *Koochiching Co.,* 97 Minn. 429, in which it was held that a use is not public unless the public as a whole has the right to resort to the property for the use for which it was acquired. The opposing view that public use means public benefit or advantage is found in *Tanner* v. *Treasury Tunnel Mining and Reduction Co.,* 35 Col. 593. Another line of decisions, and probably the modern tendency, repudiates the doctrine that any enterprise which indirectly promotes the public prosperity is necessarily a public use and holds that the true definition lies between the two opposing doctrines. *Albright* v. *Sussex County Lake and Park Association,* 71 N. J. L. 303. An attempt to compel a railroad company to permit private persons to erect private grain elevators upon its right of way is a taking for a private use. *Missouri Pacific R. R. Co.* v. *Nebraska,* 164 U. S. 403. A statute permitting an indiivdual to enlarge the ditch of another and thereby obtain water for his own land is constitutional in view of the facts of the case and the peculiar conditions existing in the state of Utah. *Clark* v. *Nash,* 198 U. S. 361. The state may forbid the erection of buildings beyond a certain height in order to preserve architectural symmetry. *Attorney General* v. *Williams,* 174 Mass. 476. A statute which authorized the taking down of a dam upon payment of compensation for loss to the mill owner is valid. *Talbot* v. *Hudson,* 16 Gray (Mass.) 417. A statute authorizing the taking of land for park purposes is constitutional. *Shoemaker* v. *United States,* 147 U. S. 282. It is a public use to take land used for a quarry in order to preserve the scenic beauty of a river and a park. *Bunyan* v. *Palisades Park Commissioners,* 153 N. Y. Supp. 622. These and many other decisions seem to make this decision inconsistent with the modern trend. Here, the purpose for which the restrictions were created had failed. The court found that it would be clearly inequitable to enforce them.